IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11623 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIYAUDDIN HAFIJUDDIN SHAIKH

Versus

COMMISSIONER OF POLICE, AHMEDABAD

Appearance:

1. Special Civil Application No. 11623 of 2004

MR CHETAN B RAVAL for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/01/2005

ORAL JUDGEMENT

1. By way of filing this Special Civil Application under Article 226 of the Constitution of India, the

petitioner has challenged his detention order passed against him by Police Commissioner, Ahmedabad City, on 13th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing detention of present petitioner as bootlegger within the meaning of the PASA Act. The petitioner came to be detained in pursuance of the said order from 14th of July, 2004.

3. The grounds of detention as placed on record depict that the detaining authority took into consideration the investigation papers of the crime registered against the petitioner before DCB Police Station, Ahmedabad, on 6th of June, 2004 under Sections 66-B, 65AE, 81 and 116 of the Bombay Prohibition Act whereby 96 and 335 bottles of liquor was found in possession of the petitioner. From the above material, the detaining authority came to the conclusion that the petitioner was engaged in illegal activity of selling liquor which was adversely affecting public health. In view of the detaining authority, the antisocial activities of the petitioner was required to be prevented forthwith and the petitioner was considered as bootlegger within the meaning of the PASA Act. The detaining authority considered the action which may be taken under the general law, who came to the conclusion that the steps against the petitioner under the general law was likely to take time, and the activities of the petitioner was required to be prevented forthwith and hence a last resort, the detaining authority passed the order, which is under challenge in this petition.

4. Learned Advocate Mr.C.B.Raval for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner to challenge the order of detention and controverted and opposed by learned AGP, it appears that this petition can be disposed of examining the issue whether from the material placed before the detaining authority, the subjective satisfaction reached by him in respect of breach of public order by the activities of the petitioner is in accordance with law.

6. Undoubtedly, a solitary crime under the Prohibition Act is registered against the petitioner, by which he is found in possession of prohibited liquor.

The detaining authority has taken into consideration the investigation papers in this crime. True it is that, there cannot be a rule of law that registration of solitary crime in all cases may result in quashing of the order of detention. At the same time, some credible material must be available with the detaining authority to reach to the subjective satisfaction that the activities of the detenue was prejudicial to the maintenance of public order. Therefore, on going through the grounds and the investigating papers, it clearly appears that at the most a crime came to be registered against the petitioner for the breach of law. There is nothing in the material placed before the detaining authority indicating that the activities of the petitioner was prejudicial to the maintenance of public order and adversely affecting the public health. A line has to be drawn between "breach of public order " and "breach of law and order". Registration of crimes may be the breach of law and order but in all cases it may not be the activity prejudicial to the maintenance of public order, especially in the present case, the detaining authority was dealing with a solitary crime registered against the petitioner under the Bombay Prohibition Act. The allegations in the grounds of detention that the petitioner was indulging in bootlegging activities are not sufficient for holding that the activity of the petitioner affected adversely to the maintenance of public order. The offence against the petitioner on the ground that he was dealing in the liquor has no bearing at all on question of maintenance of public order in the absence of any other material that those activities of the petitioner have adversely affected the maintenance of public order. The petitioner may be punished for the alleged offence committed by him which is the object of law, but the said act constituting the offence cannot be said to have affected the even tempo of the life of the community. In fact, there was absolutely no material before the detaining authority to reach to the subjective satisfaction that the activities of the petitioner was prejudicial to the maintenance of public order or affecting adversely to public health. In total absence of such material, the subjective satisfaction arrived at by the detaining authority, cannot be said to be legal, valid and in accordance with law, the order under challenge therefore is required to be quashed and set aside.

7. In the result, , the petition is allowed. The order passed by Commissioner of Police, Ahmedabad City, on 13th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby

quashed and set aside. The petitioner - Jiyauddin Hafijuddin Shaikh is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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